

**FY 2006 FAIR ACT INVENTORY JUSTIFICATION
INHERENTLY GOVERNMENTAL**

OMB is requiring Agencies to submit Inherently Governmental justifications with the FY06 Inventories. The following guidelines have been prepared for Administrations to use for completion of their FAIR Act and Inherently Governmental Inventories justifications. Guidance includes justification expectations, and criteria to meet those expectations with examples.

OMB states that an inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying real government authority as opposed to apparent authority, and decision making on behalf of the Federal government. Inherently governmental activities normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements. If government positions do not fit these definitions, then they should not be code IG, but instead Commercial.

Justification Expectations:

The key elements of a complete justification include: a thorough definition of the activities performed, how they exercise the application of authority, and why the activity should be performed by a government employee.

Justification Criteria:

Justification Criteria includes the following:

Inherently governmental justifications must include one or more activities that involve actually:

- Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- Significantly affecting the life, liberty, or property of private persons; or
- Exerting ultimate control over the acquisition, use, or disposition of United States property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.

(Note: Significantly affecting the life, liberty, or property of private persons is to be used with discretion. If used, the justification must clearly show how it can affect the life,

liberty, or property of private persons. This usually means the decision can have an immediate affect and is the final authority. See FY 05 guidance for more information.)

The activities must be specific and clearly indicate why it mandates performance only by a government employee.

The following examples are in accordance with the criteria: they identify what IG activities are performed and the authority exercised.

- Binds the government to a course of action by adjudication of contract cases pursuant to the Contract Disputes Act, 41 U.S.C. § 601 et seq., that typically include the conduct of formal or informal hearings that accord appropriate due process, example, a warranted contracting officer.
- Exercises substantial discretion and has signature authority to develop and implement policies which affect the mission of the (specific) program, example, an Agency Administrator or Deputy Administrator.
- Binds the government to a course of action. Specifically, these FTE have the authorization to make staffing decisions including controlling, managing, and directing Federal employees, example, the Director of HR or LMR.
- Has ultimate control over program and budget priorities, and controls U.S. Treasury accounts, example, the CFO or Deputy CFO.
- Signs a formal contract, policy, regulation, authorization, or order that obligates the Federal Government, example, a warranted contracting officer or administrator.

Tips for writing justifications:

- Use key words such as; substantial discretion, decision making, implementing policy, signature authority, exercise ultimate control, makes staffing decisions, binds the government, commits the government, etc.
- Indicate how a position binds the government.
- If applicable, indicate what types of staffing decisions are made. (Example: making staffing decisions such as whether to hire contractors or Federal employees and all other human relations issues affecting the office.)
- Explain what the FTE exercises the ultimate control of (Example: exercising ultimate control over the budget of the office)
- Explain what the FTE exercises substantial discretion of.
- Include the specific program, office, and or associated representation information.

Examples of Inherently governmental (IG) Justifications:

The examples are not all inclusive of IG activities performed by the DOT. Operating Administrations Competitive Sourcing Coordinators (OACSCs) will have to exercise discretion and meet the criteria based on the activities performed by your FTE.

- These FTE operate the RITA GIS program, the BTS web and the NTL support platform. They are responsible and have final decision making power for hiring, performance reviews, and authorizing position descriptions for this Office. The incumbent also represents RITA in a significant number of federal, state, local and commercial organizations including the Federal Geographic Data Committee, the Geo One stop project data team lead and National States Geographic Information Council.
- These FTE exercise extensive independent discretion in applying Government authority and value judgments making decisions for the Government. In addition, these FTE establish Governmental Program policy for the FAA. They are responsible for researching and providing advice regarding high-level and sensitive program and budget issues, processing confidential documents, and/or responding to congressional inquiries. This function is essentially an extension and voice of the Executive Management Team and includes activities that require the FTE be inherently governmental
- These FTE establishes agency (PHMSA) CR policy, determines CR priorities, determines CR budget requests, provides direction and control of CR Office staff, which includes determining the hiring of CR staff, the development of position descriptions and performance standards for CR staff, and determines the acquisition and disposal of government property. The position is privy to confidential and sensitive information regarding employee disputes and is directly involved in the discrimination complaint process. Decisions made by these FTE bear greatly upon the subsequent adjudication of formal complaints against the agency.

**FY 2006 FAIR ACT INVENTORY JUSTIFICATION
COMMERCIAL REASON CODE A**

Commercial reason code A, justifications will continue to be submitted with the FAIR Act Inventory. OMB has consistently provided guidelines to aid Agencies in determining if an FTE is commercial, assigning a reason code, and offering examples of how to write a Commercial reason code A justification. Agencies must provide complete justifications for any function that has been newly designated as reason code A on the 2006 inventory. This requirement must be met to receive credit for satisfying the PMA “green” standard on “written justifications for all categories of commercial activities determined to be unsuitable for competition.

The Circular does not specify what constitutes an acceptable reason for categorizing a function as reason code A. This document serves as guidance to help agencies structure their reason code A justifications so that agencies may achieve incremental improvements with each inventory submission.

Justification Expectations:

Justifications should reflect an appropriate and consistent application of criteria. They should contain enough information to enable a reasonable lay person to validate the function and reason code designations.

Justification Criteria:

Both OMB and DOT require the following key elements to be in the written justification:

- 1) A thorough definition of the function performed, including required skills and responsibilities,
- 2) A detailed explanation of the responsibilities and daily activities of the functional position, and
- 3) A clear explanation of why it is necessary for the commercial function to be categorized as unsuitable for competition.

Tips for writing justifications:

When writing a justification for Commercial reason code A FTE, three questions should be answered. The questions and sample answers that may or may not apply to your FTE have been provided below.

What activities do these FTE perform that are not appropriate for competition?

- Maintains senior level oversight and evaluation of core mission activities in the accounting, acquisition, financial, and human resources information technology arena on an ongoing basis;

- Establishes accountability policies and procedures, and provides independent, day-to-day oversight over accountability of Government security documents manufactured;
- Monitors monthly manufacturing performance with respect to established standards, and reporting such findings to management. Provides oversight to the Bureau's Quality Management System and Management Controls programs by conducting Internal Quality audits and Internal Control reviews;
- Performs budget, management, and program analysis work including cost analysis, workload modeling, and manpower and equipment requirements.
- Conducts reorganization and planning activities;
- Analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy;
- Develops strategic research plans, prepares policy guidance with nationwide impact, monitor the allocation and application of Federal resources for research projects, and collaborate with State and international customers, partners, and stakeholders in the development and evaluation of advanced/innovative technology;
- Leads development, implementation, and evaluation of new human resources information systems, as well as providing confidential advisory services to the Agency leaders and other senior officials;
- Performs personal security processing for new employees and contractors; implementing and improving a wide-range of employee entry and on duty programs; making determinations regarding compliance with Office of Workers' Compensation Programs requirements; and monitoring budgetary expenditures for Agency-wide human resources programs;
- Providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relation's campaigns, or conducting agency training courses;
- Participating as technical advisors to a source selection board or participating as non-voting members of a source evaluation board.

What skills are required to perform the function?

- Specialized knowledge of Bureau operations and analytical skills are required to provide management with the information needed
- Provide necessary expertise and knowledge of restrictive FAA developed automation systems are essential to ensure resources are in place for modifications of unique, complex and sophisticated automation programs and systems

- Essential leadership and technical competence to standardize, analyze, engineer, evaluate, and promote technologies and practices for improving traffic flow.
- Extensive historical knowledge is required to ensure continuity of operations. Activities include: serving as program manager for the Agency's automated staffing program; managing the personnel action and payroll systems; and integrating new Departmental and Office of Personnel Management requirements into established personnel processing and staffing processes.
- Provides a level of technical and operational knowledge essential to achievement of the Agency's vision and strategic goals for the Nation
- Requires a unique ability to move between a variety of civil engineering disciplines to include: project management; highway design; survey; right-of-way; mapping; utilities; materials; geotechnical engineering; pavements; safety; hydraulics; structures; and traffic engineering.

Why are they not suitable for competition?

- A portion of the commercial work and activities performed within this functional category requires a sufficient number of specialized FTE capable of dealing with and advising and communicating on issues of great public interest.
- Must retain a sufficient number of professionally qualified and experienced FTE as an in-house cadre of suitable candidates for the Agency's inherently governmental management, oversight, and stewardship functions.
- Function routinely requires working with proprietary, sensitive, pre-decisional business information to develop various proposals for consideration by inherently governmental final agency decision makers.
- A sufficient number of FTE are required to provide independent, day-to-day oversight of core agency function.
- Agency requires a sufficient number of trained and experienced FTE with historical knowledge to ensure continual performance of a core function.
- Agency requires a sufficient number of FTE within this function to provide an in-house cadre of suitable candidates for career growth in mission critical areas of the agency.
- The FTE performing a commercial function are currently filled by individuals with disabilities.
- FTEs currently performing function require distinctly multiple skill sets, so that the agency has the flexibility to rotate FTE between assignments as needed for maximum productivity potential.
- Function is preformed by a student intern as a part of formalized program for federal recruitment.

Examples of Commercial reason code A justifications

The examples are not all inclusive. Operating Administrations Competitive Sourcing Coordinators (OACSCs) will have to exercise discretion and meet the criteria based on the activities performed by their Commercial reason code A FTE.

- These FTE establish accountability policies and procedures, and provides independent, day-to-day oversight over accountability of Government security documents manufactured. They provide a level of technical and operational knowledge essential to achievement of the Agency's vision and strategic goals for the Nation. The FTE routinely requires working with proprietary, sensitive, pre-decisional business information to develop various proposals for consideration by inherently governmental final agency decision makers. Agency must retain a sufficient number of professionally qualified and experienced FTE as an in-house cadre of suitable candidates for the Agency's inherently governmental functions, therefore these FTE are not suitable for competition under OMB Circular A-76.
- These FTE are responsible for leading development, implementation, and evaluation of new human resources information systems, as well as providing confidential advisory services to the Agency leaders and other senior officials. They provide necessary expertise and knowledge of restrictive FAA developed automation systems essential to ensure resources are in place for modifications of unique, complex and sophisticated automation programs and systems. The Agency requires a sufficient number of trained and experienced FTE with historical knowledge to ensure continual performance of a core function. Therefore these FTE are not appropriate for competition under OMB Circular A-76.
- These FTE provide the professional engineering expertise needed to serve as front-line representatives for interpreting and applying Federal policies; represent FHWA in public forums and meetings with other agencies; collaborate with State, local and tribal government customers; achieve uniform interpretation and application of Federal laws, regulations, and policies; and evaluate and improve Federal Lands Highway Program delivery processes. In this area, FHWA must retain a sufficient number of trained and experienced FTE as an in-house cadre of suitable candidates for the Agency's inherently governmental management, oversight, and stewardship functions. These FTE are not appropriate for competition under OMB Circular A-76.